

<DOC>
[109 Senate Hearings]
[From the U.S. Government Printing Office via GPO Access]
[DOCID: f:99967.wais]

S. Hrg. 109-16

INDIAN TRUST REFORM

=====

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

VIEWS OF THE ADMINISTRATION AND INDIAN COUNTRY OF HOW THE SYSTEM OF
INDIAN TRUST MANAGEMENT, MANAGEMENT OF FUNDS AND NATURAL RESOURCES,
MIGHT BE REFORMED

—————
MARCH 9, 2005
WASHINGTON, DC

99-967 U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 2005

For Sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; (202)
512-091800
Fax: (202) 512-092250 Mail: Stop SSOP, Washington, DC 20402-090001

COMMITTEE ON INDIAN AFFAIRS

JOHN McCain, Arizona, Chairman

BYRON L. DORGAN, North Dakota, Vice Chairman

PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
GORDON SMITH, Oregon
LISA MURKOWSKI, Alaska
MICHAEL D. CRAPO, Idaho
RICHARD BURR, North Carolina
TOM COBURN, M.D., Oklahoma

DANIEL K. INOUE, Hawaii
KENT CONRAD, North Dakota
DANIEL K. AKAKA, Hawaii
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington

Jeanne Bumpus, Majority Staff Director
Sara G. Garland, Minority Staff Director

(ii)

C O N T E N T S

	Page
Statements:	
Cason, Jim, acting assistant secretary for Indian affairs, Department of the Interior.....	3
Colombe, Charles, president, Rosebud Sioux Tribe.....	15
Dorgan, Byron L., U.S. Senator from North Dakota, vice chairman, Committee on Indian Affairs.....	2
Gray, Jim, chairman, board of directors, Intertribal Monitoring Association.....	12
Hall, Tex, president, National Congress of American Indians..	10
Harper, Keith, Native American Rights Fund.....	19
Hillaire, Darrell, chairman, Lummi Nation.....	17
McCain, Hon. John, U.S. Senator from Arizona, chairman, Committee on Indian Affairs.....	1
Swimmer, Ross, special trustee for American Indians, Department of the Interior.....	3

Appendix

Prepared statements:	
Cason, Jim (with attachment).....	30
Cobell, Elouise, C., Lead Plaintiff in Cobell v. Norton.....	81
Colombe, Charles (with attachment).....	98
Gray, Jim.....	27
Hall, Tex.....	107
Hillaire, Darrell (with attachment).....	117
Hoopa Valley Indian Tribe (with attachment).....	204
Swimmer, Ross (with attachment).....	30

INDIAN TRUST REFORM

WEDNESDAY, MARCH 9, 2005

U.S. Senate,
Committee on Indian Affairs,
Washington, DC.

The committee met, pursuant to notice, at 11 a.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Akaka, Cantwell, Dorgan, Inouye, Johnson, Murkowski, Smith, and Thomas.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA,
CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The Chairman. We will now begin our hearing on trust reform.

Our first witness is Jim Cason, who is the acting assistant secretary for Indian affairs. He is accompanied by Ross Swimmer, special trustee for American Indians, Department of the Interior.

The subject of Indian trust management reform has been an issue of considerable issue to Congress and to this committee for over a decade. In 1994, Congress enacted the American Indian Trust Fund Management Reform Act with the expectation of bringing order to at least one aspect of the Federal Government's trust responsibility to Indian people, the management of tribal and individual Indian moneys held in trust accounts.

About 2 years later, the Cobell case class action lawsuit was filed. In the years since then, we have all learned just what a sorry state the trust fund management system was in. The reasons for this are manifold, I am sure, but most people would agree that for many decades the Federal Government has not been held accountable for its management practices.

This hearing is not directly about the Cobell lawsuit, although trust reform should be a component of any legislation to resolve the case and problems that led to it. The purpose of today's hearing is to listen to the views of the Administration and Indian country of how the system of Indian trust management, management of funds and natural resources, might be reformed. I am interested in hearing from the Administration on what it has done to improve trust management and what additional steps it intends to take, because it is no secret that many in Indian country are not satisfied in whole or in part with the Administration's approach and have different views about the direction we should be going in reforming the system.

I also look forward to hearing what the tribal leaders and Ms. Cobell on the second panel have to say about reforming the system.

One more point before proceeding. Several times in recent months I have promised to make trust reform, including the settlement of the Cobell case and related issues, a high priority during my tenure as chairman of the Committee on Indian Affairs, but I will also repeat here that I intend to give it only one good shot. If it looks like we are not getting anywhere, if the tribes, the Government, or other interested parties cannot come to terms on a settlement of the lawsuit and on what trust reform should be, then I will leave that task to a future Congress and the courts and concentrate my efforts on other important issues in Indian country.

I am hoping that the Administration and Indian country will begin working with committee staff immediately to see whether something close to a consensus can be reached on the key components of trust reform. This will probably require an efficient, but representative working group within Indian Country to begin helping us shape a bill that can be introduced

for review and comment by all stakeholders.

Vice Chairman Dorgan, do you have a statement at this time?

**STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH
DAKOTA, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS**

Senator Dorgan. Mr. Chairman, let me say that I share your sentiments. It is the case that we cannot solve this issue. Chairman McCain and I and other members of this committee cannot resolve this issue. The parties to this issue must find a way to develop consensus to resolve this issue.

I do not think there is any question but that what is happening now is having a detrimental impact on Indian country. We see sharp cuts in some of the tribal programs that are critically important to Indian tribes for the welfare of the Indian people in this country. We see those sharp cuts in part as a result of the litigation. In my judgment, more and more funds are going to both sides of the litigation. In some ways, I guess in many ways, the Indian people are bearing the burden of the costs for both sides of the litigation.

I think that the settlement of these claims, the settlement of this issue is imperative. My hope is that through the process of this hearing and through the development of other approaches, that we can find a way for us to get all the parties together to reach a consensus and put this behind us.

If we do not, it will have an impact on virtually everything this committee does, all the appropriations that we are involved in with respect to Indian tribes for years to come. I don't think any of us want that. What we want is a fair, thoughtful, equitable settlement that all parties can agree to, and then we move on.

So Mr. Chairman, thank you very much for your leadership.

The Chairman. Thank you very much.

Welcome, Mr. Cason. Welcome back, Mr. Swimmer. Please proceed.

-----*excerpt*-----

**STATEMENT OF JIM GRAY, CHAIRMAN, BOARD OF DIRECTORS, INTER-
TRIBAL MONITORING ASSOCIATION**

Mr. Gray. Thank you, Senators. My name is Jim Gray. I am the principal chief of the Osage Nation. I am also chairman of the Inter-Tribal Monitoring Association, known as ITMA.

This organization of 60 tribes across the country that have vast trust resources that are managed by the Department of the Interior, BIA through the OST. Over the course of these past 15 years of this organization's existence, we have worked diligently with both the House and Senate committees that have jurisdiction on Indian affairs. We also have worked diligently with the Administration over the years in a variety of ways on how the administration of the trust resources of Indian country is being managed and how it is being appropriated.

Part of the concerns that ITMA wants to bring before the committee today is primarily detailed in our written testimony which is being submitted to the committee.

The Chairman. All written statements will be made part of

the record.

Mr. Gray. Okay, thank you.

So today what I would just like to do is just make brief observations about where we are today from ITMA's standpoint, and how we can be helpful in contributing to an overall effort to achieve real trust reform in Indian country.

Part of the biggest concerns that our organization has had is following the process of the 2-B model and its fiduciary trust model, as it is being called today as it is being rolled out across Indian country. One of the biggest concerns that our organization has had is the lack of adequate tribal input and discussion as these policies have been carried out by the Administration.

One of the concerns that I have had just personally is the internal workings of this entity before it was rolled out into Indian country. What I would like to have been able to have been a part of, and of course Chairman Hall had mentioned this earlier, that the task force had worked for almost two years on this effort to try to find some consensus. But the only thing that I think Indian country came out of that was finding the areas where there was disagreement. Unfortunately, that disagreement has not been, I don't know, sufficiently communicated to Congress or to the Administration as these proposals have been fully implemented.

Another concern that we have had is that the process of getting input from the people who are most affected by these policies, the beneficiaries, the individual account holders, as well as the tribes themselves, has been something that ITMA has worked very hard to try to find a resolution to. Last year, at the very beginning of last year, we started out what I thought was a very ambitious and hopeful effort by ITMA to reach out to Indian country. We held seven listening conferences in six States around the country last year. We have four scheduled to be going on this year. This work, as important as it is, it is limiting in some respects in that we would like to be able to do more. The problem is that the purpose of this is to try to find out from individuals across Indian country the impacts of the fiduciary trust model is having on Indian country.

We have made some general observations that are in our written testimony, but I would just like to speak to a couple of them right now. One of the concerns is obviously the speed at which the roll-out is taking place and its impact, and the fact that many of these people who are beneficiaries are not receiving a full understanding of the changes that are going on within the Administration from the OST to the BIA. Most of the individual Indians just do not understand what the implications of moving these policies and administrative positions around.

From the tribal leader's standpoint, I am somewhat familiar with the moving of the boxes all over and the reorganization. As Chairman Hall mentioned earlier, we have concerns that we feel like there has been some consolidation at the central office of very important functions that normally used to be taken care of at the ground.

Part of what I am most proud of with these listening conferences that the ITMA has hosted had to do with being able to get top-level presidential-appointed Administration officials to come before these hearings. Mr. Swimmer and the

Deputy Director Donna Erwin attended many of these meetings. We tried our best to try to get their counterparts at the Bureau to attend these meetings as well. One of the problems that we encountered was just scheduling problems, but for the most part these two individuals from the OST made themselves available to listen to the concerns from both tribes and individuals time and time again on their concerns.

Many of the concerns could be explained with just good communication. Some of the concerns were fundamental, and are part of our written testimony, that we think need to be addressed by this committee.

So ultimately, and I will just sum up real quick at this point, is that we have what I think is probably a good system in place right now from ITMA's standpoint to continue this effort to get input into Indian country, and to specifically be able to address and document some of the concerns that are happening in the roll-out of the Department's new fiduciary trust model.

I think what I would like to be able to continue to bring before this committee on behalf of this organization over time is basically a presence in Indian country that is maintaining what the Administration believes is the best trust model that they can put together, and just to see its impact on Indian country, and be able to come before this committee as needed to be able to present to you the views from Indian country as to how that is working.

If Congress does not act on trust reform in the form of any legislation, I would hope that you would see that our role would be a helpful one. But beyond that, if there is a real interest in doing a full-blown legislative solution on trust reform, that you will also see that ITMA can be helpful in that capacity as well. I do pledge to work with the organizations that we have developed relationships with, like the Council of Energy Resource Tribes, the Inter-Tribal Timber Council, and many other intertribal organizations that are devoted to trust resource management as a narrow focus, as well as working with Chairman Tex Hall here, who has demonstrated great leadership in this area on behalf of NCAI.

So at this point, I would like to make myself available for any questions you may have.

[Prepared statement of Mr. Gray appears in appendix.]

The Chairman. Thank you very much.